

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 30, 2018**

Sheila T. Reiff  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2017AP170**

**Cir. Ct. No. 2015CV1733**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

---

**J. STEVEN TIKALSKY,**

**PLAINTIFF-APPELLANT,**

**V.**

**TERRY STEVENS,**

**DEFENDANT-RESPONDENT,**

**SUSAN FRIEDMAN A/K/A SUSAN TIKALSKY, JAMES TIKALSKY AND  
AMENDED AND RESTATED DONALD AND BETTY LOU TIKALSKY REVOCABLE  
TRUST,**

**DEFENDANTS.**

---

APPEAL from a judgment of the circuit court for Waukesha County:

MARIA S. LAZAR, Judge. *Reversed and cause remanded.*

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

¶1 HAGEDORN, J. J. Steven Tikalsky is one of four children. During the later years of his parents' lives, he became estranged from them and other extended family members, leading his parents to exclude him from having any inheritance. Following the death of his parents, Steven<sup>1</sup> raised multiple claims against all three of his siblings, including respondent Terry Stevens, to try to recover a share of the inheritance. One of his "claims" was for a constructive trust. The circuit court granted summary judgment on the constructive trust "claim" on the ground that when Steven voluntarily withdrew his unjust enrichment claim, he no longer had a basis to seek a constructive trust.

¶2 The issue before us is whether Tikalsky has presented enough material on summary judgment to continue seeking a constructive trust. We conclude he has. A constructive trust is a permissible equitable remedy upon a showing that the legal title of some property is held by someone who in equity and good conscience should not be entitled to its beneficial enjoyment where title was obtained by means of actual or constructive fraud, duress, abuse of a confidential relationship, mistake, commission of a wrong, or by any form of unconscionable conduct. Here, Steven is seeking title to funds he alleges were obtained by some measure of untoward conduct on the part of Susan and James, his two other siblings. Even if the specific claim of unjust enrichment itself has been withdrawn, the factual claims undergirding the potential remedy of a constructive trust have been sufficiently established at this stage of the proceedings. Therefore, we reverse the circuit court's order dismissing the constructive trust "claim."

---

<sup>1</sup> As the circuit court did, we will refer to the members of the Tikalsky family by their first names for the sake of clarity.

## BACKGROUND

¶3 This case has grown out of an unfortunate intra-family dispute. Donald and Betty Lou Tikalsky had four children, one of whom was Steven. During the last decade of Donald and Betty Lou’s lives, what appears to have been a harmonious family was torn asunder. The reasons are vigorously disputed, but everyone agrees that Steven and his wife became estranged from Donald and Betty Lou along with Steven’s siblings and their families. The discord and dissension grew to such a point that Steven’s parents decided to exclude Steven from having any inheritance, instead leaving it to their other children and their families.<sup>2</sup> Donald died in 2009 and Betty Lou died in 2014, apparently never having reconciled with Steven. From Steven’s perspective, the fault fell, at least in part, at the feet of Susan and James. Steven believed that Susan and James successfully sought to divide him from his family, leading to the loss of his inheritance.

¶4 So Steven went to court, asserting nine causes of action against his three siblings. Only two of the named claims were against Terry—one for unjust enrichment and one for constructive trust.<sup>3</sup> The siblings moved for summary judgment, after which Steven voluntarily withdrew most of his claims. The remaining “causes of action” were for undue influence and intentional interference with expected inheritance against Susan and James; and constructive trust against Susan, James, and Terry. One of the causes of action withdrawn was the claim for

---

<sup>2</sup> Although Donald and Betty Lou “took actions to disinherit” Steven, they had already provided one million dollars to Steven’s children to fund their educations.

<sup>3</sup> These claims were asserted against all three siblings.

unjust enrichment against Terry; this means the only remaining claim against Terry is for constructive trust.

¶5 The circuit court granted summary judgment in favor of Susan and James on the undue influence claim, but denied their motion for summary judgment on the action for intentional interference with expected inheritance. That claim remains. Regarding the constructive trust “claim,” the circuit court granted summary judgment, explaining:

Plaintiff Steven urges the Court to keep the constructive trust cause of action because the defendants were unjustly enriched and he is, therefore, entitled to the equitable remedy of a constructive trust. But as just noted by the Defendants, Plaintiff Steven voluntarily dismissed his unjust enrichment cause of action. So accordingly this cause of action for constructive trust is unsupported. Summary judgment dismissing this cause of action is granted.

Steven appeals.

## DISCUSSION

¶6 The parties dispute whether constructive trust is a cause of action, and if so, whether Steven has produced enough evidentiary material to survive summary judgment. Terry insists that we should affirm the circuit court’s decision to dismiss Steven’s cause of action for constructive trust because it is not a cause of action at all, but a remedy. Even if it is a cause of action, Terry insists that Steven was required to prove the elements of a common law unjust enrichment claim and prove that Terry engaged in some sort of wrongful conduct, neither of which, she argues, have been established here. Steven responds that he was not required to establish the elements of a formal unjust enrichment claim or prove

that Terry engaged in wrongful conduct in order for the circuit court to impose a constructive trust.

¶7 Though the parties spend considerable time debating whether constructive trust should be labeled a cause of action or a remedy, the answer to that question is largely immaterial. Our precedents generally describe a constructive trust as an equitable remedy rather than an independent cause of action. *See, e.g., Prince v. Bryant*, 87 Wis. 2d 662, 667, 275 N.W.2d 676 (1979) (describing a constructive trust as “an equitable remedy”); *Pluemer v. Pluemer*, 2009 WI App 170, ¶9, 322 Wis. 2d 138, 776 N.W.2d 261 (same); *but see Gorski v. Gorski*, 82 Wis. 2d 248, 252-54, 262 N.W.2d 120 (1978) (concluding that “the amended complaint does allege facts sufficient to support a cause of action on the theory of a constructive trust”). The label, however, is not important to resolving this case. Regardless of how it is styled, litigants do well to make plain their intent to seek a constructive trust and to establish the requisite facts to trigger this remedy. Our case law has outlined the elements a circuit court must find to impose a constructive trust, and here, Steven has presented enough on summary judgment to maintain his pursuit of this equitable remedy.

¶8 When reviewing the circuit court’s grant of summary judgment, “we apply the standards set forth in [Wis. STAT. §] 802.08 [(2015-16)<sup>4</sup>],” just as the circuit court does. *Swatek v. County of Dane*, 192 Wis. 2d 47, 61, 531 N.W.2d 45 (1995). A movant is entitled to summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

---

<sup>4</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Sec. 802.08(2) (2015-16).

¶9 We normally review a circuit court’s decision to impose a constructive trust for an erroneous exercise of discretion. *Pluemer*, 322 Wis. 2d 138, ¶9. We will sustain a discretionary decision “if the trial court examined the relevant facts, applied the proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Id.* (citation omitted). Here, the circuit court effectively determined the question as a matter of law, and not by rejecting a constructive trust as a matter of its discretion. Thus, the question is whether the circuit court applied the proper standard of law—that is, whether its legal determination was correct.

¶10 Similar in concept to an equitable lien, a constructive trust is an equitable remedy that a court may, in its discretion, impose to prevent the retention of a benefit by one party that would be unjust as against the other party. *Id.*; see also *McIntyre v. Cox*, 68 Wis. 2d 597, 601-602, 229 N.W.2d 613 (1975) (defining an equitable lien). A constructive trust arises when a person holding title has a duty to convey it because he or she would be unjustly enriched if he or she was permitted to retain it. See *Prince*, 87 Wis. 2d at 667 (citing with approval the RESTATEMENT (FIRST) OF RESTITUTION, § 160 (1937)). Whereas an equitable lien grants a security interest in property, see *McIntyre*, 68 Wis. 2d at 602, the imposition of a constructive trust vests complete title to the property in question with the plaintiff. See *Prince*, 87 Wis. 2d at 667; see also *Rawlings v. Rawlings*, 358 P.3d 1103, 1111 (Utah 2015) (explaining that a “constructive trust gives a complete title to the plaintiff” (quoting DAN B. DOBBS, LAW OF REMEDIES § 4.3(3) (2d ed. 1993))).

¶11 A “constructive trust will be imposed only in limited circumstances” where the following prerequisites, or “elements,” have been met: First, the legal title must be “held by someone who in equity and good conscience should not be entitled to beneficial enjoyment,” and second, “[t]itle must ... have been obtained by means of actual or constructive fraud, duress, abuse of a confidential relationship, mistake, commission of a wrong, or by any form of unconscionable conduct.” *Wilharms v. Wilharms*, 93 Wis. 2d 671, 678-79, 287 N.W.2d 779 (1980).

¶12 Unlike a formal claim for unjust enrichment, a plaintiff him or herself need not be the one who actually conferred the benefit upon another person; someone else may have conferred the benefit. For example, our courts have routinely held that a constructive trust may be imposed over life insurance proceeds despite the fact that the plaintiff conferred no benefit upon the actual recipients of the proceeds. *See, e.g., Prince*, 87 Wis. 2d at 664, 673 (remanding for an evidentiary hearing to determine whether a constructive trust should be imposed); *Pluemer*, 322 Wis. 2d 138, ¶¶1-2, 23 (same). The requirement that the plaintiff conferred a benefit upon the defendant is part of the “quasi contract” theory of unjust enrichment, but in the context of constructive trusts, our case law recognizes a broader concept of unjust enrichment. *See McDonah v. McDonah*, No. 2014AP712, unpublished slip op. ¶¶11-12 (WI App Dec. 23, 2014).<sup>5</sup>

¶13 Furthermore, our case law makes clear that the party holding title unjustly need not necessarily be the person who committed the unconscionable

---

<sup>5</sup> Authored decisions issued after July 1, 2009, may be cited for persuasive value. WIS. STAT. § 809.23(3).

conduct, fraud, duress, or who abused a confidential relationship—although that is ordinarily the case. See *Wilharms*, 93 Wis. 2d at 678-79; *Prince*, 87 Wis. 2d at 667-68. Our supreme court has explicitly stated:

It is not necessary that the person against whom the constructive trust is to be imposed be a wrongdoer or know of the wrongdoing initially. If the other elements for imposing a constructive trust have been satisfied, and the holder of the legal title is not a bona fide purchaser, a constructive trust may be imposed.

*Wilharms*, 93 Wis. 2d at 679.

¶14 With respect to the first element of a constructive trust, Steven’s allegations and supporting evidence raise material facts tending to show that his siblings hold title to property that equity dictates should go to him. Steven is arguing that all of his siblings received a benefit from his parents as a result of the unconscionable conduct of some of them, and that it is unjust for the siblings—including Terry—to retain that benefit. In his intentional interference claim (which survived summary judgment<sup>6</sup>) Steven alleges that Susan and James wrongfully encouraged Donald and Betty Lou to disinherit Steven and intentionally and tortiously interfered with Steven’s expected inheritance. If proven, this claim would establish that *all three* siblings (including Terry) were unjustly enriched by an inheritance that would have gone—at least in part—to Steven. That is, the siblings in “equity and good conscience should not be entitled

---

<sup>6</sup> The circuit court remarked that it thought that Steven’s theory was “quite a stretch,” but it found that Steven had produced enough evidence to survive summary judgment on the claim. On appeal, Terry makes no claim that the circuit court’s decision on this point was erroneous. Thus, for purposes of this appeal, Steven has a viable claim that he was disinherited as a result of the wrongful conduct of two of his siblings.



to beneficial enjoyment” of the inheritance. Thus, Steven has provided enough on the first element to survive summary judgment.

¶15 As to the second element, Steven’s claim for intentional interference is sufficient to potentially establish that title to the inheritance was “obtained by means of actual or constructive fraud, duress, abuse of a confidential relationship, mistake, commission of a wrong, or by any form of unconscionable conduct.” *See id.* As the circuit court noted, part of Steven’s claim for intentional interference was that Susan and James made false statements and “innuendos” to Donald and Betty in an attempt to get the parents to disinherit Steven. Thus, the court concluded that Steven could “try to show fraud or bad faith.” These allegations (again, assuming they are proven) qualify as “fraud” or “unconscionable conduct” that could justify the imposition of a constructive trust over one-fourth of the inheritance, as Steven requests. At the very least, these assertions raise issues of material fact on this prerequisite. As explained above, the fact Terry was not involved in any of the alleged misconduct makes no difference. Therefore, though the framing of Steven’s request to impose a constructive trust may not be technically correct, the facts undergirding his remaining claim for intentional interference support the second element for a constructive trust.

¶16 Because Steven’s claim for intentional interference would establish both elements necessary for a constructive trust, these elements remain for further adjudication. The circuit court’s conclusion that simply because the formal unjust enrichment claim was withdrawn that the elements of a constructive trust could not still be established against Terry was in error. We conclude that Steven—on this record and at this stage of the litigation—may continue to seek this remedy against Terry if he is able to establish that she holds property that “in equity and good conscience [she] should not be entitled to,” and title to that property was

“obtained by means of actual or constructive fraud, duress, abuse of a confidential relationship, mistake, commission of a wrong, or by any form of unconscionable conduct.” *Wilharms*, 93 Wis. 2d at 678-79. Whether a constructive trust ought to be imposed at some later date is, so long as the elements are established, within the circuit court’s remedial discretion.<sup>7</sup>

*By the Court.*—Judgment reversed and cause remanded.

Not recommended for publication in the official reports.

---

<sup>7</sup> In its oral ruling, the circuit court noted that it might entertain a subsequent motion for summary judgment on the intentional interference claim on the grounds that Steven may not be able to prove that he had an “expectancy” in his parents’ estate. James and Susan filed a motion on that ground that, to our knowledge, has yet to be adjudicated. Thus, we express no opinion on the effect of the outcome of that motion. We merely conclude that Steven may request a constructive trust be imposed at the circuit court’s discretion assuming he is able to establish that he was wrongfully disinherited. If he is unable to establish that his siblings wrongfully hold property that “in equity and good conscience” should have gone to him, then his request for a constructive trust must fail. See *Wilharms v. Wilharms*, 93 Wis. 2d 671, 678-79, 287 N.W.2d 779 (1980).

